

Written Testimony on SB 437

August 26, 2009

Mr. Chair and Committee Members:

Thank you for the opportunity to comment on SB 437 and the very important issue of brownfield redevelopment. We appreciate the efforts of both the sponsor and the Committee in addressing this issue and support the bill as substituted.

MMA represents about 2,500 members that operate in the full spectrum of manufacturing industries, and which account for 90% of Michigan's industrial workforce. Manufacturing provides about 600,000 direct jobs in Michigan.

Michigan is a manufacturing state. Manufacturing, along with allied industries of mining and utilities, is the largest single sector of the Michigan economy, creating 20% of the gross state product (GSP), or \$76 billion. This contribution is nearly double the contribution of the next largest sector, real estate, with just \$43 billion in GSP.

MMA members have, for years, supported Part 201 and worked with the department to improve its implementation. While improvements have been achieved, MMA believes that the process needs to be re-engineered to promote protective remedies, faster and with less overall cost to both the implementing parties and the department.

In 2006, the Department of Environmental Quality (DEQ) asked Public Sector Consultants (PSC) to facilitate a stakeholder-driven process to discuss and identify potential improvements to the programs. A group of experienced individuals met periodically between 2006 and early 2007 to identify and discuss problems and improvements to the Part 201 and brownfield programs. PSC then issued a report in April, 2007 documenting that process.

At the end of 2007, Michigan enacted legislation addressing the recommendations in the PSC report associated with improving Michigan's brownfield program. But nothing has been done yet to address improving Part 201. The problems identified in the PSC report and other problems identified since that report continue to substantially bar increased investment in remediation and redevelopment in Michigan. The over-arching theme representing the greatest barrier is conservative decision-making by the DEQ that leads to ambiguity and a lack of finality. This imposes an environmental and economic cost to the State as investors are hesitant to undertake a redevelopment project and brownfield sites are not remediated.

The Part 201 program must be reformed for Michigan to move forward and appeal to those interested in investing in brownfields. Below is a list of some of the changes MMA believes is absolutely necessary in reforming the program. These changes center on streamlining the Part 201 processes; creating transparency, flexibility and incentives for the DEQ to make less conservative decisions and achieving finality at sites.

Create a cleanup process with appropriate remediation and leads finality.

"Finality/certainty is critical to improving the overall rate of compliance with Part 201." Unfortunately, Part 201's cleanup process is "overly complex and the endpoint is ambiguous." This has stunted Michigan's growth because national lenders demand site closures that offer a level of certainty similar to that available in other states. We propose streamlining the DEQ-approval process for remediation and closures of sites, while clarifying the existing self-implemented closure process to provide greater certainty.

Re-evaluate the risk management process within the DEQ.

One of the greatest barriers to increased investment in remediation and site redevelopment is ultra conservative decision making by the agency. This approach comes at an environmental and economic cost to the state. If the goal is too conservative and viewed as unachievable, the incentive for investment, or specifically the return on investment, is significantly diminished. The economic and environmental consequences of ultra conservative decision making are clear; the environment does not benefit from rapid investment and the state does not benefit from increased economic activity and the commensurate tax revenue.

Clarify Legislature's intent that decision making be based on realistic and not hypothetical risks.

The DEQ should review the level of conservatism in its decision-making and consider risk reduction when approving cleanups at sites so that more sites would be cleaned up. As noted previously, over time, a level of ultra conservatism has crept into DEQ approvals and the number of closures based on evaluations of site-based risks has dropped. The Department should take into account realistic and not hypothetical risks. For example, if isolating property with a fence is presumed to limit access, then the MDEQ should accept it and move forward. Too often, the DEQ focuses on hypothetical situations like whether someone could cut a hole in the fence to gain access. Also, the DEQ should approve closures whether based on source removal, risk assessment, pathway controls, or use controls. This will greatly increase the number of closures approved by the DEQ and the number of sites for redevelopment.

Define water bodies subject to groundwater surface water interface (GSI) criteria.

This will insure consistency with the Legislature's goal of protecting fish, wildlife and human health without the ultra conservatism of assuming that every drop of groundwater will impact surface water in the absence of any proof of such impact or even of a connection.

Establish a benchmarking process for the program.

Any successful process requires the establishment of programmatic performance benchmarks and with measurable metrics. The 201 program should establish benchmarks for decision response times, clean-ups approved, and other measures that assess performance per dollar of funding.

Clarify appropriate methods to distinguish a new release from existing contamination in a Baseline Environmental Assessment (BEA) to simplify the BEA-approval process.

When a person petitions the DEQ to approve its BEA, the DEQ's focus on every hypothetical risk can make it difficult to obtain approval and typically preclude the most desirable outcome. This is especially true for Category S BEAs where a person will be

using the same hazardous substances as those contaminating the property. Keeping sites in similar historic use is often most desirable because of zoning and economic patterns. Michigan's economic base depends on industrial activity. The Department's reluctance to approve Category S BEAs effectively takes most impacted properties out-of-bounds to any sort of industrial development, except when total remediation occurs, which for most sites is cost prohibitive and non-competitive. We propose to clarify appropriate methods to distinguish a new release from existing contamination to provide more flexibility in pursuing the DEQ's approval of a BEA, keeping in mind that an owner or operator always has the burden of distinguishing contamination associated with a new release from existing contamination under Part 201.

Allow for more flexibility to create site-specific criteria.

Currently, many Part 201 cleanup criteria are out-of-date or of questionable scientific validity. Further, the criteria are, by nature, "generic" (i.e., they are based on very broad and conservative assumptions about property use that may not apply to a particular property). While Part 201 currently allows for the use of site-specific criteria in place of generic criteria, such use has been made very difficult and does not allow a party to take into account the most up-to-date science or practical facts about the property. We propose giving owners and operators more flexibility in using site-specific criteria, including the ability to take into account recent scientific advances and developments.

MMA believes that the substitute S-1 accomplishes a number of significant reforms, including those discussed above, which are necessary to make the Part 201 process more efficient and effective. These changes will lead to more cleanups and rejuvenation to the urban cores. We urge committee members to support SB 437 as substituted.

Thank you.

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